

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 2607

By Delegate Kump

[Introduced February 19, 2025; referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §16-18-3, §16-18-8 and §54-1-2 of the Code of West Virginia, 1931,
2 as amended; relating to changing which properties may be taken by eminent domain and
3 the causes for such takings.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 18. SLUM CLEARANCE.

§16-18-3. Definitions.

1 The following terms, wherever used or referred to in this article, shall have the following
2 meanings, unless a different meaning is clearly indicated by the context:

3 "Area of operation" means in the case of a municipality, the area within such municipality
4 and the area within five miles of the territorial boundaries thereof, except that the area of operation
5 of a municipality under this article shall not include any area which lies within the territorial
6 boundaries of another municipality unless a resolution shall have been adopted by the governing
7 body of such other municipality declaring a need therefor; and in the case of a county, the area
8 within the county, except that the area of operation in such case shall not include any area which
9 lies within the territorial boundaries of a municipality unless a resolution shall have been adopted
10 by the governing body of such municipality declaring a need therefor; and in the case of a regional
11 authority, shall mean the area within the communities for which such regional authority is created:
12 *Provided*, That a regional authority shall not undertake a redevelopment project within the
13 territorial boundaries of any municipality unless a resolution shall have been adopted by the
14 governing body of such municipality declaring that there is a need for the regional authority to
15 undertake such development project within such municipality. No authority shall operate in any
16 area of operation in which another authority already established is undertaking or carrying out a
17 redevelopment project without the consent, by resolution, of such other authority.

18 "Authority", "slum clearance and redevelopment authority", or "urban renewal authority"

means a public body, corporate and politic, created by or pursuant to section four of this article or any other public body exercising the powers, rights, and duties of such an authority as hereinafter provided.

"Blighted area" means an area, other than a slum area, which by reason of the predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site improvement, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of the community, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

"Blighted property" means a tract or parcel of land that, by reason of abandonment, dilapidation, deterioration, ~~age or obsolescence~~, inadequate provisions for ventilation, light, air or sanitation, ~~high density of population and overcrowding~~ tax delinquency, ~~deterioration of site or other improvements~~ or the existence of conditions that endanger life or property by fire or other causes, or any combination of such factors, is detrimental to the public health, safety, or welfare.

"Bonds" means any bonds, including refunding bonds, notes, interim certificates, debentures, or other obligations issued by an authority pursuant to this section.

"Community" means any municipality or county in the state.

"Clerk" means the clerk or other official of the municipality or county who is the custodian of the official records of such municipality or county.

"Federal government" is the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

"Governing body" means the council or other legislative body charged with governing the municipality or the county court or other legislative body charged with governing the county.

45 "Mayor" means the officer having the duties customarily imposed upon the executive head
46 of a municipality.

47 "Municipality" means any incorporated city, town, or village in the state.

48 "Obligee" means any bondholder, agents, or trustees for any bondholders, or lessor
49 demising to the authority property used in connection with a redevelopment project, or any
50 assignee or assignees of such lessor's interest or any part thereof, and the federal government
51 when it is a party to any contract with the authority.

52 "Person" means any individual, firm, partnership, corporation, company, association, joint
53 stock association, or body politic, and shall include any trustee, receiver, assignee, or other similar
54 representative thereof.

55 "Public body" means the state or any municipality, county, township, board, commission,
56 authority, district, or any other subdivision or public body of the state.

57 "Real property" includes all lands, including improvements and fixtures thereon, and
58 property of any nature appurtenant thereto, or used in connection therewith, and every estate,
59 interest, and right, legal or equitable, therein, including terms for years and liens by way of
60 judgment, mortgage, or otherwise and the indebtedness secured by such liens.

61 "Redeveloper" means any person, partnership, or public or private corporation or agency
62 which shall enter or propose to enter into a redevelopment contract.

63 "Redevelopment contract" means a contract entered into between an authority and a
64 redeveloper for the redevelopment of an area in conformity with a redevelopment plan.

65 "Redevelopment plan" means a plan for the acquisition, clearance, reconstruction,
66 rehabilitation, or future use of a redevelopment project area.

67 "Redevelopment project" means any work or undertaking:

68 (1) To acquire pursuant to the limitations contained in §54-1-2(11) of this code slum areas
69 or blighted areas or portions thereof, including lands, structures, or improvements, the acquisition
70 of which is necessary or incidental to the proper clearance, development, or redevelopment of

71 such slum or blighted areas or to the prevention of the spread or recurrence of slum conditions or
72 conditions of blight;

73 (2) To clear any such areas by demolition or removal of existing buildings, structures,
74 streets, utilities, or other improvements thereon and to install, construct, or reconstruct streets,
75 utilities, and site improvements essential to the preparation of sites for uses in accordance with a
76 redevelopment plan;

77 (3) To sell, lease, or otherwise make available land in such areas for residential,
78 recreational, commercial, industrial or other use or for public use or to retain such land for public
79 use, in accordance with a redevelopment plan; and

80 (4) Preparation of a redevelopment plan, the planning, survey and other work incident to a
81 redevelopment project, and the preparation of all plans and arrangements for carrying out a
82 redevelopment project.

83 "Slum area" means an area in which there is a predominance of buildings or improvements
84 or which is predominantly residential in character and which, by reason of dilapidation,
85 deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or
86 open spaces, high density of population and overcrowding, or the existence of conditions which
87 endanger life or property by fire and other causes, or any combination of such factors, is conducive
88 to ill health, transmission of disease, infant mortality, juvenile delinquency and crime, and is
89 detrimental to the public health, safety, morals, or welfare.

90 "Unblighted property" means a property that is not a blighted property.

§16-18-8. Eminent domain.

1 (a) An authority shall have the right to acquire by the exercise of the power of eminent
2 domain, pursuant to the limitations contained in §54-1-2(a)(11) of this code, any real property
3 which it may deem necessary for a redevelopment project or for its purposes under this article
4 after the adoption by it of a resolution declaring that the acquisition of the real property described
5 therein is necessary for such purposes. An authority may exercise the power of eminent domain in

6 the manner provided for condemnation proceedings, in ~~chapter fifty-four of the Code of West~~
7 ~~Virginia, 1931, as amended~~ Chapter 54 of this code, or it may exercise the power of eminent
8 domain in the manner now or which may be hereafter provided by any other statutory provisions
9 for the exercise of the power of eminent domain. Property already devoted to a public use may be
10 acquired in like manner: *Provided*, That no real property belonging to the municipality, the county
11 or the state may be acquired without its consent.

12 (b) When an authority has found and determined by resolution that certain real property
13 described therein is necessary for a redevelopment project or for its purposes under this article,
14 the resolution shall be conclusive evidence that the acquisition of such real property is necessary
15 for the purposes described therein.

CHAPTER 54. EMINENT DOMAIN.

ARTICLE 1. RIGHT OF EMINENT DOMAIN.

§54-1-2. Public uses for which private property may be taken or damaged.

1 (a) The public uses for which private property may be taken or damaged are as follows:

2 (1) For the construction, maintenance and operation of railroad and traction lines (including
3 extension, lateral and branch lines, spurs, switches and sidetracks), canals, public landings,
4 wharves, bridges, public roads, streets, alleys, parks and other works of internal improvement, for
5 the public use;

6 (2) For the construction and maintenance of telegraph, telephone, electric light, heat and
7 power plants, systems, lines, transmission lines, conduits, stations (including branch, spur and
8 service lines), when for public use;

9 (3) For constructing, maintaining and operating pipelines, plants, systems and storage
10 facilities for manufacturing gas and for transporting petroleum oil, natural gas, manufactured gas,
11 and all mixtures and combinations thereof, by means of pipes, pressure stations or otherwise,
12 (including the construction and operation of telephone and telegraph lines for the service of such

13 systems and plants), and for underground storage areas and facilities, and the operation and
14 maintenance thereof, for the injection, storage and removal of natural gas in subterranean oil
15 and/or gas bearing stratum, which, as shown by previous exploration of the stratum sought to be
16 condemned and within the limits of the reservoir proposed to be utilized for such purposes, has
17 ceased to produce or has been proved to be nonproductive of oil and/or gas in substantial
18 quantities, when for public use, the extent of the area to be acquired for such purpose to be
19 determined by the court on the basis of reasonable need therefor. Nothing in this subsection shall
20 be construed to interfere with the power of the state and its political subdivisions to enact and
21 enforce ordinances and regulations deemed necessary to protect the lives and property of citizens
22 from the effects of explosions of oil or gas;

23 (4) For constructing, maintaining and operating, water plants and systems, including lines
24 for transporting water by any corporate body politic, or private corporation, for supplying water to
25 the inhabitants of any city, town, village or community, for public use, including lands for pump
26 stations, reservoirs, cisterns, storage dams, and other means of storing, purifying and transporting
27 water, and the right to take and damage lands which may be flooded by the impounded waters,
28 and to appropriate any spring, stream and the surrounding property necessary to protect, preserve
29 and maintain the purity of any such spring, stream, reservoir, cistern and water impounded by
30 means of any storage dam;

31 (5) For the purpose of constructing, maintaining and operating sewer systems, lines and
32 sewage disposal plants, to collect, transport and dispose of sewage. When in the interest of the
33 public welfare and the preservation of the public health, the construction of a sewer line to serve a
34 single building or institution shall be deemed a public use, and, for such purpose, the right of
35 eminent domain, if within a municipal corporation, may be exercised in the name of a municipal
36 corporation, and if not within a municipal corporation, in the name of the county commission of the
37 county in which the property is located;

38 (6) For the reasonable use by an incorporated company engaged in a public enterprise of

39 which the state or any county or municipality is the sole or a part owner;

40 (7) For courthouses and municipal buildings, parks, public playgrounds, the location of
41 public monuments, and all other public buildings;

42 (8) For cemeteries, and the extension and enlargement of existing cemeteries: *Provided*,
43 That no lands shall be taken for cemetery purposes which lie within four hundred feet of a dwelling
44 house, unless to extend the boundaries of an existing cemetery, and then only in such manner that
45 the limits of the existing cemetery shall not be extended nearer than four hundred feet of any
46 dwelling house distant four hundred feet or more from such cemetery, or nearer than it was to any
47 dwelling house which is within four hundred feet thereof;

48 (9) For public schools, public libraries and public hospitals;

49 (10) For the construction and operation of booms (including approaches, landings and
50 ways necessary for such objects), when for a public use;

51 (11) By the State of West Virginia for any and every other public use, object and purpose
52 not herein specifically mentioned, but in no event may "public use", for the purposes of this
53 subdivision, be construed to mean the exercise of eminent domain primarily for private economic
54 development.

55 For purposes of this subdivision, no unblighted private property may be taken by the State
56 of West Virginia or its political subdivisions without the owner's consent when the primary purpose
57 of the taking is economic development that will ultimately result in ownership or control of the
58 property transferring to another private entity, other than one having the power of eminent domain,
59 whether by purchase agreement, long-term lease agreement or any other mechanism whereby
60 ownership or control is effectively transferred. ~~*Provided*, That a municipal urban renewal authority~~
61 ~~may exercise a right of eminent domain as to property only within an area designated a slum area~~
62 ~~or blighted area under the provisions of article eighteen, chapter sixteen of this code~~

63 By the United States of America for each and every legitimate public use, need and
64 purpose of the government of the United States, within the purview, and subject to the provisions

65 of chapter one of this code.

66 (12) For constructing, maintaining and operating pipelines, plants, systems and storage
67 facilities, for the transportation by common carrier as a public utility of coal and its derivatives and
68 all mixtures and combinations thereof with any substance by means of pipes, pressure stations or
69 otherwise (including the construction and operation of telephone and telegraph lines for the
70 service of such systems and plants), for public use: *Provided*, That the common carrier engages in
71 some intrastate activity in this state, if there is any reasonable demand therefor: *Provided*,
72 *however*, That in addition to all other requisites by federal or state Constitutions, statute or
73 common law required for the taking of private property for public use, a further prerequisite and
74 condition precedent to the exercise of such taking of or damage to private property for public use
75 as in this subsection hereinabove provided, is that the Public Service Commission of this state, in
76 an appropriate hearing and proceeding on due notice to all interested persons, firms or
77 corporations, in accordance with the procedure now or hereafter established by statute and the
78 regulations thereunder, shall have found that such pipeline transportation of coal and its
79 derivatives and all mixtures and combinations thereof is required for the public convenience and
80 necessity, and that the Public Service Commission of this state shall not extend a certificate of
81 convenience and necessity or make such finding of public convenience and necessity unless, in
82 addition to the other facts required to support such findings, it shall have been established by the
83 applicant therefor that the patents and other similar rights under which the applicant proposes to
84 construct, maintain or operate such pipeline, plants, systems and storage facilities shall be and
85 shall remain equally available, insofar as said subsequent applicant may determine such
86 availability, upon fair and reasonable terms, to other bona fide applicants seeking a certificate of
87 convenience and necessity and finding of fact for any other pipeline in West Virginia; for the
88 purpose of making the findings hereinbefore set forth the Public Service Commission shall have
89 and exercise jurisdiction, and that the aforesaid findings in this proviso above set forth shall be
90 subject to judicial review as in other Public Service Commission proceedings.

91 It is the intention of the Legislature in amending this section by the addition of subdivision
92 (12) to extend the right of eminent domain to coal pipelines for public use; to provide for regulation
93 of such coal pipelines by the Public Service Commission of this state or the Interstate Commerce
94 Commission of the United States of America, or both; to assure that such rights shall be extended
95 only to public utilities or common carriers as distinguished from private carriers or contract carriers;
96 to make patents covering the same equally available to others on fair and reasonable terms; and
97 to prevent monopolistic use of coal pipelines by any users thereof which would result in any
98 appreciable economic detriment to others similarly situated by reasons of any such monopoly.

NOTE: The purpose of this bill is to change which properties may be taken by eminent domain and the causes for such takings.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.